

the Committee intended the amendments to be applied to their fullest constitutional limits.⁹

"Congress chose statutory language appropriate to effectuate this purpose. Section 301(k), as amended, prohibits 'any . . . act' which results in adulteration of the product. And food is adulterated if it 'has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth.'¹⁰ This language defines with particularity an explicit standard of conduct. Section 301(k), read together with the definition of food adulteration contained in § 402(a) (4), therefore, gives ample warning that the 'holding' or storing of food under insanitary conditions whereby it may have become contaminated is prohibited.

"It is settled law in the area of food and drug regulation that a guilty intent is not always a prerequisite to the imposition of criminal sanctions. Food and drug legislation, concerned as it is with protecting the lives and health of human beings, under circumstances in which they might be unable to protect themselves, often 'dispenses with the conventional requirement for criminal conduct-awareness of some wrongdoing. In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger. *United States v. Balint*, 258 U.S. 250.' *United States v. Dotterweich*, 320 U.S. 277, 281.

"It is argued, nevertheless, that the Government in this case is seeking to impose criminal sanctions upon one 'who is, by the very nature of his business, powerless' to protect against this kind of contamination, however high the standard of care exercised. Whatever the truth of this claim, it involves factual proof to be raised defensively at a trial on the merits. We are here concerned only with the construction of the statute as it relates to the sufficiency of the information, and not with the scope and reach of the statute as applied to such facts as may be developed by evidence adduced at a trial.

"Finally, the appellee attempts to uphold the dismissal of the information on a ground not relied on by the District Court. The appellee says that it was a bailee of the food, not a seller, and that it was not holding the food for sale within the meaning of § 301(k). Both the language and the purpose of the statute refute this construction. The language of § 301(k) does not limit its application to one holding title to the goods, and since the danger to the public from insanitary storage of food is the same regardless of the proprietary status of the person storing it, the purpose of the legislation—to safeguard the consumer from the time the food is introduced into the channels of interstate commerce to the point that it is delivered to the ultimate consumer—would be substantially thwarted by such an unwarranted reading of the statutory language. *United States v. Kocmond*, 200 F. 2d 370, 372; cf. *United States v. Sullivan*, 332 U.S. 689, 696; *United States v. Dotterweich*, 320 U.S. 277, 282.

"Accordingly, we hold that a criminal information charging a public storage warehouseman with holding food (after interstate shipment and before ultimate sale) under insanitary conditions whereby it may have become contaminated with filth, charges an offense under § 301(k) of the Federal Food, Drug and Cosmetic Act. The order of the District Court dismissing the information is therefore reversed and the case is remanded to that court for further proceedings consistent with this opinion."

The case was rescheduled for trial on 6-29-64, at which time the defendant entered a plea of nolo contendere to 1 count of the information, and was fined \$750.

29714. Rice, flour, and marshmallows. (F.D.C. No. 49861. S. Nos. 21-631/2 X, 21-635 X.)

⁹ Id., at p. 6. During the Senate hearings on the amendment, the Associate Commissioner of Food and Drugs explained that "under the bill as enacted here, if there was a definite showing of violation on the part of the warehouse which had this material stored, a prosecution of them criminally for doing the act of holding under these insanitary conditions which result in adulteration could ensue." Hearing before a Subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, on S. 1190 and H.R. 4071, 80th Cong., 2d Sess., April 17, 1948.

¹⁰ See note 2, supra.

INFORMATION FILED: 7-21-64, Dist. Colo., against Associated Grocers of Colorado, Inc., Denver, Colo., Fred S. Fishburn, executive vice president and general manager, Jack B. Kennedy, assistant general manager, and Menno R. Duden, plant superintendent.

ALLEGED VIOLATION: Between 5-22-63 and 8-22-63, and while quantities of rice, flour, and marshmallows were being held for sale after shipment in interstate commerce, the defendants caused the articles to be held in a building that was accessible to and infested with birds and mice, and to be exposed to contamination by birds and mice thereby causing the articles to become adulterated.

CHARGE: 402(a)(3)—the marshmallows contained mouse excreta, mouse hairs, and gnawed marshmallows; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty by the corporation to 3 counts; by each individual to 1 count.

DISPOSITION: 8-31-64. Corporation—\$900 fine; Fishburn—\$200 fine; Kennedy and Duden—\$150 fine each.

29715. Rice. (F.D.C. No. 50057. S. No. 49-420 A.)

QUANTITY: 27 100-lb. bags at Detroit, Mich., in possession of Edgar's Warehouse, Inc.

SHIPPED: 12-2-63, from Memphis, Tenn.

LIBELED: 4-23-64, E. Dist. Mich.

CHARGE: 402(a)(4)—held under insanitary conditions.

DISPOSITION: 10-5-64. Default—destruction.

29716. Rice. (F.D.C. No. 50522. S. Nos. 70-422/23 A.)

QUANTITY: 150 25-lb. bags, and 10 100-lb. bags, at Sioux Falls, S. Dak., in possession of Frank's Transfer & Storage.

SHIPPED: 4-6-64, from Stuttgart, Ark.

LIBELED: 9-15-64, Dist. S. Dak.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 10-14-64. Default—delivered to a public institution for use as animal feed.

29717. Wheat (2 seizure actions). (F.D.C. Nos. 49436; 49442. S. Nos. 62-731 X; 62-408 X.)

QUANTITY: 126,190 lbs. and 128,000 lbs. in two railway cars at Kansas City, Mo.

SHIPPED: 10-21-63 and 10-25-63, from Walker, Kans., by Nebraska-Kansas-Colorado Grain Co.

LIBELED: 11-4-63 and 11-6-63, W. Dist. Mo.

CHARGE: 402(a)(3)—contained insect-damaged kernels when shipped.

DISPOSITION: 11-19-63 and 11-21-63. Consent—claimed by Mid-Continent Grain Co., Kansas City, Mo. Reconditioned; approximately 34,000 lbs. segregated as unfit.

29718. Wheat. (F.D.C. No. 49050. S. Nos. 34-134 X, 34-405 X.)

QUANTITY: 90,000 lbs. at Minneapolis, Minn.

SHIPPED: 6-24-63, from Amherst, S. Dak., by Farmers Cooperative Elevator Co.

LIBELED: 7-22-63, Dist. Minn.